Monograph Series

Volume 13—Examining Legal Writing Empirically

This article was originally published with the following citation:

Susan Hanley Kosse & David T. Ritchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80 (2003).

How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study

Susan Hanley Kosse and David T. ButleRitchie

Members of the legal profession know that lawyers need good communication skills. In particular, good legal research and writing skills are vital to the practice of law. As a result, virtually every law school has developed a more or less comprehensive legal research and writing program. But do these programs effectively prepare new law graduates for their work as legal professionals? We designed a study to explore this question.

Starting with the methodology developed by the Law School Admissions Council to evaluate the elements of good legal writing,[1] we surveyed members of the academy, bench, and bar to see what they thought of the writing skills of law graduates. Initially we concentrated on whether there is a difference between what legal writing teachers and practitioners focus on when they evaluate legal writing. We received responses from 276 members of the profession, and the good news is that there is widespread agreement among all sectors about what constitutes strong written work. Surprisingly, though, there was also widespread agreement that new lawyers do not write well.[2] This

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This article is dedicated to the memory of our friend and colleague Tom Blackwell, who was taken from us on January 16, 2002. Tom was a supporter of this project from its inception, and we have missed his insightful comments these last few months.

Susan Kosse thanks all the survey participants including Mary Ellen Donaghy from the ABA, Marlene Will for her invaluable assistance with the statistical data, and Riaan van Zyl and Judith Fischer for their professional advice. She also thanks her research assistants, Jacquelyn Tinsley and Matt Williams, for their countless hours of help, the Association of Legal Writing Directors for the generous grant that made this project possible, and Glenn Kosse for all his editing suggestions.

David ButleRitchie also thanks the ALWD and the participants in this survey, as well as Tom Blackwell, Jan Levine, and Richard Neumann for their moral support and inspiration. Finally, he thanks Lawrence B. Smith for his excellent research assistance, and Kirsten ButleRitchie for her constant support of his endeavors.

1. Hunter M. Breland & Frederick M. Hart, Defining Legal Writing: An Empirical Analysis of the Legal Memorandum (Newtown, 1994).

2. Many respondents thought that a high percentage of more experienced legal professionals have writing skills that are no better. We focus on new lawyers here because the training of law students to enter the profession is one of our primary concerns.

raises the question of how effective skills pedagogy actually is. In what follows we explore this question further, suggesting possible obstacles to effective legal writing training in law school.

We begin by laying out the methodology derived from the LSAC to determine the elements of strong legal writing. We then discuss and evaluate the data received from our survey. Since it seems to be agreed that new law graduates have poor writing skills, we explore the causes of this perceived deficiency. We advance several possible reasons why lawyers, in particular new lawyers, struggle with such an important component of their professional obligation. Finally, we briefly discuss ways in which law schools might attack the root causes of their students' poor writing skills. Our preliminary conclusions should aid legal writing teachers as they strive to better prepare their students for their chosen profession.

The Analysis of Writing

We began our study by investigating what factors legal professionals use to assess their own writing skills and those of their peers. From this initial investigation we became convinced that if we could identify a set of standards that the different groups of respondents would embrace, we might have a consistent measure by which to evaluate the writing of new law graduates. We thought this consistency would be important for us as an evaluative tool, and would help legal writing teachers generally to reinforce the skills taught in the typical research and writing class.

In 1994 the LSAC published a report, "Defining Legal Writing: An Empirical Analysis of the Legal Memorandum," which detailed the findings of a three-year research project designed to identify the elements essential to good legal writing.[3] A number of legal writing teachers, humanities specialists at the Educational Testing Service, and two legal consultants analyzed over 237 legal memoranda, critiquing the writing in each. Using these critiques, the authors identified specific important elements within the memoranda. They analyzed the data and drew conclusions as to which elements were most important in determining the overall quality of the memoranda. According to the LSAC team, application of law to facts, structural organization, flow, and clarity were among the most important predictors of the memoranda's quality.

Using the 1994 report as a starting point, we looked at whether these previously identified elements remain the most important to legal writing teachers in law schools. In addition, we compared the teachers' opinions with those of judges and practicing lawyers. Specifically, we asked what practitioners and judges identify as elements of good legal writing, and we compared the elements they identified with both the teachers' opinions and the 1994 report.

We thought it was important to make these comparisons in order to help legal writing teachers equip future lawyers with the skills necessary to succeed. As legal writing professionals ourselves, we had a concept of what legal

3. Breland & Hart, *supra* note 1.

educators generally believe to be key to strong legal writing skills. We perceived that the bench and bar might differ from the academy in their idea of what constitutes good writing. We thought that identification and discussion of the differences would aid in course development.

While we anticipated that we would see differences between legal educators and practitioners, we allowed for a variety of responses from all segments of the profession. As we note below, the survey revealed a striking similarity in the respondents' perceptions. The elements identified as hallmarks of good writing by the members of the LSAC study were embraced by an overwhelming majority of respondents. The survey that we circulated, then, seemed to be based upon a solid theoretical foundation that judges, law teachers, and practitioners all support.

The Surveys

To begin our research, we designed a questionnaire based on the 1994 LSAC survey, and we asked several experts in legal writing to review the draft.[4] In designing the questionnaire we sought to accomplish three objectives. First, we wanted to identify what each group considered to be the essential elements of good writing; we asked an open-ended question to that effect. The second goal was to identify any common problems encountered by our participants. Our final goal was to try to quantify the responses by having the respondents rank the elements generally acknowledged as being important parts of the various sections of appellate briefs and memoranda.

Our goal with the ranking was twofold. First, we wanted to compare the rankings of the three groups to see if there were any differences in what judges, attorneys, and legal writing teachers thought were the most important elements. Our second goal was to explore the reasons for any differences we observed. We wanted this survey to be a thorough compilation of what the various groups expected to see in persuasive legal documents. This would be useful for legal writing teachers as they designed their courses, for attorneys as they prepared their briefs and memoranda, and for judges as they drafted opinions.

Once the survey was developed, we sampled four groups.[5] We sampled attorneys in several ways. We mailed the survey in July 2001 to more than 70 attorneys who practiced in Louisville, Kentucky, and about 40 more attorneys practicing outside of Kentucky. Also, in late July, we sent 100 surveys to the national conference of the Council of Appellate Staff Attorneys. In September 2001 we passed out approximately 35 surveys to the Jefferson County (Kentucky) Women Lawyers Association. Finally, we personally passed out the survey at the Council of Appellate Lawyers' annual convention held in New York in October 2001, in which about 84 attorneys participated.

4. Tom Blackwell, Jan Levine, and Richard Neumann all reviewed drafts of the survey and made extensive comments.

5. We did not assume that any of the groups surveyed are dominated by people who write well. We did assume that the legal writing teachers were qualified to evaluate writing even though we could not make that assumption for the attorneys and judges surveyed.

We sampled state law judges by mailing surveys to the Minnesota Court of Appeals, the Kentucky Supreme Court, the Kentucky Court of Appeals, the Michigan Supreme Court, the Michigan Court of Appeals, Virginia district and circuit judges, and various state judges throughout the United States who had been recommended to us as having an interest in legal writing pedagogy. We also passed out the survey to the chief judges of the state intermediate courts who were meeting in conjunction with the Council of Appellate Lawyers in October 2001. Approximately 69 judges attended that conference.

We sampled federal judges mainly by mailing surveys to judges who had been recommended to us as having a possible interest in writing skills. We also mailed surveys to each judge of the U.S. Court of Appeals for the Tenth Circuit.

Finally, we sent surveys to more than 60 persons on the membership list of the Association of Legal Writing Directors, and we asked for volunteers on the Legal Writing Institute's listserv. We mailed an additional 90 surveys to legal writing teachers, attorneys, and judges that those volunteers recommended.

Our response rate was as follows.

	Attorneys	*State judges*	*Federal judges*	*Legal writing teachers*
Original goal	75	50	15	50
Surveys sent	329	126	31	104
Responses	138	54	18	66
Response rate	41.9%	42.8%	58.0%	63.5%
Percentage of survey respondents	50.0%	19.5%	6.5%	24.0%

In 2001 there were around 926,000 lawyers in the United States.[6] Over 11,000 of these lawyers are judges.[7] A review of the AALS Directory of Law Teachers (2001–02) indicates that there are nearly 1,200 people in the U.S. who teach legal research and writing. While the number of participants in our study is not large in comparison with these numbers, we did achieve a relatively high response rate. Mail surveys with a response rate of 20 to 30 percent are not uncommon for samples of the general population.[8] When a sample is of a special group, as in this case, response rates are usually higher. But we had used a combination of convenient, purposive, and geographic sampling strategies, and response rates for such a combination of sampling procedures are not known. Although our findings cannot be viewed as representative of the total population due to sampling protocols, we are confident that they represent substantial numbers of each group of respondents and are of practical

6. U.S. Census Bureau, Statistical Abstract of the United States 380 (Washington, 2001).

7. See <http:// allianceforjustice.org/judicial/about/frequently.html> (last visited Apr. 9, 2003) for numbers of federal judges (862) and Sourcebook of Criminal Justice Statistics 2000, eds. Kathleen Maguire & Ann L. Pastore, 73, table 1.81 (Washington, 2001) for numbers of state and local judges (10,258). Some estimates of the number of judges in the U.S. go as high as 30,000. See, e.g., The National Report of the Common Law Judicial Conference on International Child Custody, <http://travel.state.gov/natrep.html> (last visited Apr. 10, 2003).

8. David Royse, Program Evaluation: An Introduction 161 (Chicago, 1992).

significance. What is especially significant is that the response rate for each group in the survey was higher than 40 percent, with the overall response rate for all groups exceeding 50 percent.

Biographical Information About the Respondents

The majority of the practicing attorneys we surveyed worked either for a firm of fewer than 10 people or for a firm of more than 50 people.

Firms	*Fewer than 10*	*10-20*	*21-50*	*More than 50*
Attorney respondents	33.1%	17.6%	16.2%	33.1%

When asked about the writing and analysis instruction that they had received in law school, the majority of all groups said that they had had a required writing component in their first-year curriculum.

	Required 1st-year writing course
Attorneys	93.3%
State judges	65.4
Federal judges	68.8
Legal writing teachers	96.8
Overall	87.0

The required first-year writing course typically involved 2 or 3 credit hours.

0–1 credit hours	21.1%
2 credit hours	33.0
3 credit hours	29.4
4 or more credit hours	16.5

Approximately three-quarters of the respondents (71.4%) took at least one upper-level writing course.

Appellate Advocacy	43.6%
Advanced Legal Writing	17.7
Legal Drafting	20.9
Upper-class writing requirement	44.0

The percentages do not add up to 100 because respondents could check more than one course.

General Questions on Evaluating Writing

We began by asking several open-ended questions to gauge the respondents' thoughts about the writing they see in their work settings. We thought that open-ended questions would give respondents a freer range for their subjective opinions. We then compared these initial open-ended responses with responses to our list, prepared earlier, of the essential elements of good writing. (Respondents could check more than one element as having importance.)

	Average over all groups
Concision	38.4%
Clarity	28.2
Emphasis on organization	17.8
Direct work/focus/point made early	4.6
Proper grammar and composition	4.0
Logic	2.6
Intellectual honesty	2.0
Literate	2.0
Proper use of language	1.0

Other elements identified by the participants included:

- brevity
- completeness
- simple, easy-to-understand language
- persuasive theme
- use of active voice
- specifically addressing the legal issue or issues at play
- precision
- good analysis
- legibility
- arguments well supported by authority
- understandability
- accuracy

There was no apparent difference between the groups: attorneys, judges, and legal writing teachers all ranked clarity and concision as the two most essential elements of good writing. This was entirely consistent with the LSAC's 1994 survey.

There was a similar consensus when respondents were asked about the quality of the writing they see. Nearly 94 percent, overall, of the respondents found briefs and memoranda marred by basic writing problems.

	Percentage that thinks there are problems in writing
Attorneys	92.5%
State judges	93.6
Federal judges	93.8
Legal writing teachers	95.1
Overall	93.5

These findings seemed to us interesting and disturbing. We asked ourselves why there was almost universal agreement, across the groups, that most legal writing is weak. Although we did not ask respondents to tell us *why,* in their opinion, lawyers do not write well, we thought there might be several explanations (which we explore below).

We asked participants to identify common problems seen in legal writing, choosing from a list of options. The results were as follows.

Lack of focus	76.1%
Failure to develop overall theme or theory of case	71.4
Failure to use composition rules	66.4
Failure to be persuasive	52.1
Failure to discern the relationship among multiple authorities	38.6
Grammar, spelling, or punctuation errors	38.6
Citation errors	28.2
Failure to examine development of the law	23.2

We found it interesting that when we had asked the same question in an open-ended fashion, respondents had not assigned much importance to two of the top responses above. Failure to use composition rules (66.4%) was identified by only 4 percent of respondents in the open-ended question, and failure to develop overall theme or theory (71.4%) was not mentioned at all. Lack of focus (76.1%) as a writing problem is the obverse of concision (38.4%), clarity (28.2%), and emphasis on organization (17.8%) as writing virtues. Other problems listed included:

- disorganization
- sloppy language
- wordiness
- failure to prove a point
- improper references of facts and law
- repetition
- failure to edit properly
- insufficient research
- passive voice
- overuse of quotations
- poor proofreading

A clear majority of respondents—57.3 percent—thought that new members of the profession do not write well. As legal writing teachers, we found that quite interesting. The split on this question was not nearly as wide as we had thought it might be. We take this as an encouraging sign: perhaps the schools that are making significant resource and curriculum commitments to teaching legal writing are indeed having a positive impact on the profession. We are especially encouraged when we put this finding in conjunction with the findings from the next section of the survey, which indicate little disagreement across the job categories about the essential elements of good legal writing. We are obviously teaching our students what the bench and bar think is most important.

Even the 57.3 percent of respondents who did not think new graduates write well is not necessarily a reflection on students' legal writing instruction in law school. It may just be that recent graduates have not yet had time to develop their writing as professionals. Another possibility is that legal writing instruction in law schools is adequate, but students have insufficient opportunity in the second and third years to hone their writing skills.

The ALWD annual survey of American law schools indicates that law students receive, on average, 2.22 credit hours of legal writing instruction in

the fall and 2.14 credit hours in the spring in the required first-year program. Only thirteen schools reported that they required an upper-level legal writing component, beyond the first-year program, for graduation.[9] With so little required writing, it is hardly surprising that new graduates do not write as well as more senior members of the profession. After all, repetition and practice are essential to improving writing skills.

Common complaints about the new graduates' writing included:

- too much verbiage
- lack of focus
- failure to grasp issues
- incompleteness
- poor grammar
- lack of basic writing principles
- lack of clarity
- lack of overall organization

These common complaints seem to support the answers the respondents gave for the elements that constitute strong writing.

Ranking the Elements

In part three of the survey we asked participants to rank certain elements that have been commonly identified as essential to good briefs and legal memoranda. We focused on eight aspects of briefs and memoranda: the question presented, the brief answer, the statement of facts, point headings, legal analysis, organization, style, and format. For each of these aspects we listed several necessary elements and asked the respondents to rank the elements in order of importance. For each aspect we list below the responses received. After the raw data, we provide a brief interpretation.

When asked about the important elements of the *question presented,* survey participants responded as follows:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Suggests affirmative response	10.7%	16.4%	5.6%	5.9%	4.6%
Not conclusory	45.6	41.0	35.0	47.1	24.6
Has legal claim, principles, facts	36.3	37.3	40.7	35.3	69.2
Number corresponds to point heading	7.4	5.2	18.5	11.8	1.5

Evidently respondents thought that the two most important characteristics of the question presented were that it not be conclusory, and that the question include the legal claim and the controlling legal principles, with the key facts suggested.

9. Jo Anne Durako, 2002 Survey Results 5, 13 (Camden, 2002).

Respondents ranked the elements of the *brief answer* in the following way:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Avoids citations	6.0%	5.8%	7.4%	5.6%	1.5%
Can be understood independently	37.7	47.7	28.0	37.5	40.0
Conceptually linked to question presented	24.3	18.1	31.5	22.2	31.8
Summarizes principal arguments	30.1	31.5	28.0	34.0	33.0

Three of the four groups—attorneys (47.7%), federal judges (37.5%), and legal writing teachers (40%)—indicated that the brief answer must be understandable independently and ranked this as the most important element. The state judges ranked it just 3.5 percentage points below the idea that the brief answer should be conceptually linked to the question presented. All of the respondents considered improper or missing citations to be the least important element of an effective brief answer.

When asked about the *statement of facts* section of memos, participants gave the following responses:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Favorable facts in position of emphasis	6.5%	4.3%	5.6%	0.0%	13.6%
Procedural history included	4.0	0.7	1.9	11.1	1.5
No legal conclusions/ editorializing	12.3	6.5	22.2	5.6	18.2
Readable narrative	64.0	64.0	62.0	70.6	57.6
Unfavorable facts included but not emphasized	4.3	2.2	7.4	11.1	4.5

By consensus, the most important quality of a well-formed statement of facts was that it be a readable narrative. Well over 50 percent of each of the four groups selected this as the most important element. Three of the four groups—attorneys (6.5%), state judges (22.2%), and legal writing teachers (18.2%)—chose "no legal conclusions/editorializing" as the second-most-important element. The federal judges split the second element between "procedural history included" (11.1%) and "unfavorable facts included but emphasized" (11.1%). The attorneys, state judges, and legal writing teachers all ranked "procedural history included" as the least important element. One explanation may be that these groups usually include procedural history in a separate section from the statement of facts.

As for *point headings,* survey participants ranked the elements as follows:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
One sentence	5.4%	5.8%	7.4%	5.5%	3.0%
Concisely written	39.8	37.0	68.5	61.1	15.2
Conclusory tone favorable to client	11.2	18.1	1.8	5.6	4.5
Sketch out arguments	26.3	27.5	13.0	16.7	36.4
Supports client	17.0	11.6	9.3	5.6	37.9

Three of the four groups—attorneys (37%) and both state (68.5%) and federal judges (61.1%)—ranked concision as the most important element. In contrast, most of the legal writing teachers wanted the point headings to support the client's position (37.9%) and sketch out the arguments (36.4%). Only 15.2 percent of the teachers favored concisely written point headings.

When we explored the importance of various elements linked to the *legal analysis* found in legal memoranda, respondents ranked the options in the following way:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Distinguishes between authority	4.3%	2.2%	11.1%	0.0%	4.5%
Defuses counterarguments	3.6	4.3	5.6	0.0	1.5
Substantiates all statements	12.3	4.3	27.8	11.1	25.8
Decision appealed from supported/criticized	2.9	2.2	5.6	5.6	1.5
Weaves authority	43.1	42.0	40.7	61.1	42.4
Uses precedential facts	6.5	6.5	3.7	11.1	7.6
Harmful cases are distinguished	2.2	2.2	3.7	0.0	1.5
Policy arguments are made	1.4	1.4	1.9	0.0	1.5
Rules set out before facts	14.5	18.4	9.2	0.0	21.9

The most important element of analysis for all four groups was effectively weaving the entire body of authority into an argument to give the reader a clear understanding of the applicable body of law. State judges (27.8%), federal judges (11.1%), and legal writing teachers (25.8%) also wanted the analysis to substantiate all statements with authority. The attorneys (4.3%) did not view this as important, instead listing as the second-most-important element that the rules of law from relevant precedential cases are stated before their application to the facts of the client's case.

For *organization,* respondents ranked the elements in this way:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Topic sentences make outline	17.4	19.6	20.4	5.6	13.6
Active sentences	6.9	5.8	16.7	5.6	1.5
Thesis paragraph	13.0	26.1	7.4	5.6	24.2
Organized around issues	34.4	20.1	24.1	44.4	54.5
Discuss client's case first	3.9	5.1	3.7	0.0	5.1
First issue is most important	23.3	27.9	28.6	35.3	7.24
Transitions	0.0	0.0	1.9	0.0	0.0

The groups were split on what they perceived as the element most important to organization. The attorneys (27.9%) and the state judges (28.6%) wanted the first issue presented to be the one most likely to get needed relief, and also to be the most significant issue presented by the case. In contrast, federal judges (44.4%) and legal writing teachers (54.4%) wanted the argument organized around issues (not cases), although the federal judges did

rank "first issue is most important" as a close second (35.3%). Another difference between the groups was their ranking of the importance of a thesis paragraph. The attorneys (26.1%) and the legal writing teachers (24.2%) ranked this element much higher than the state judges (7.4%) and the federal judges (5.6%). In fact the teachers ranked this higher than putting the most important issue first. There was a consensus that transitions were the least important element to organization.

Survey participants ranked the elements of *style* as follows:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Legalese is avoided	21.4%	22.4%	31.5%	11.1%	13.6%
Quotations kept to a minimum	5.8	2.1	3.7	0.0	16.7
Integrated statement	57.0	59.4	51.9	44.4	62.1
Words are persuasive	16.3	18.8	16.7	33.3	6.1

The most important style element for all four groups was including an integrated statement of the theory (or theories) that favors the client's position. Three of the groups—attorneys (2.1%), state judges (3.7%), and federal judges (0%)—ranked "quotations kept to a minimum" as the least important element. Legal writing teachers (6.1%) ranked "words are persuasive" as least important.

Finally, the elements of *format* were ranked in this way:

	Overall	*Attorneys*	*State judges*	*Federal judges*	*Legal writing teachers*
Complies with court rules	44.9%	44.9%	42.6%	38.9%	48.5%
Length complies with court rules	26.4	28.3	16.7	22.2	31.8
No citation mistakes	13.8	15.2	22.2	16.7	3.0
No grammar mistakes	17.0	15.8	29.6	16.7	9.1
No punctuation mistakes	4.7	5.1	7.4	5.6	1.5
No spelling mistakes	10.1	14.5	9.3	11.1	41.5
Word count complies	10.5	14.5	7.4	11.1	4.5

The most important element for all four groups was that documents comply with court rules. Also high was the respondents' ranking of the elements dealing with compliance with length or word-count rules. The next-most-important element after complying with the rules was "no grammar mistakes," followed by "no citation mistakes" and "no punctuation mistakes."

After collecting and evaluating all the data, we were happy to learn that all the groups surveyed had remarkably consistent views on what constitutes good legal writing. There were slight variances as to precisely which elements were the most important in any particular category, but on the whole there was strong agreement about the factors which contribute to good legal writing skills. This suggests that the evaluative criteria developed by the LSAC in 1994 are indeed sound.

Analysis of the Data

After collating the data we had collected and having a professional statistician evaluate the numbers, we analyzed the themes that began to emerge from the raw statistics. The data collected suggest a broad consensus about what constitutes good legal writing and a widely shared perception that most lawyers, including most new lawyers, do not write well. This suggested that while most respondents were clear (and consistent) in their evaluation of writing, the skills of new law graduates are not necessarily where members of the profession expect them to be. This was somewhat disconcerting to us, because it suggests a disconnect between the pedagogy in writing classes and the results that professionals in the field see. In other words, since the survey confirmed that legal writing teachers are teaching what members of the bar and bench think important, we wanted to explore exactly what was hampering the skills of new law graduates.

Our results seem to destroy a well-entrenched myth that academics do not know how to teach what lawyers do—including, of course, writing and other practical skills. Much has been written about the divide between the academy and the bar. One particularly blunt article put it this way:

> Academics compete for space in the law reviews, but little attention is given to student writing. With academic tenure, promotion, and status dependent on publishing, professors turn the bulk of their attention to writing rather than teaching. Thus, law students fail to obtain the oral and written skills of expression necessary for survival of the profession. Language is, after all, the medium in which the profession conducts its business.
>
> Moreover, many academics, by virtue of their disdain of law practice, have succeeded only in imbuing their students with the ability to express themselves in professional jargon without communicating the human voice of the law.[10]

James W. McElhaney (an academic himself) is no kinder to legal educators. In his humorous advice to a mythical colleague, Angus, the quintessential legal writing expert, says:

> I suppose it's understandable that law schools concentrate more on the framework for conducting advocacy than how to actually do it. . . .The framework is where the rules are, and legal educators have always been more interested in rules than in what actually influences people and how they make decisions.
>
> So academics write books and articles about how the adversary system is assigned to work—which they typically say is to let everybody argue everything, not questioning whether that's an effective way to try cases or handle appeals.
>
> And law school teachers often advise their students to argue every issue—good or bad—as forcefully as they can, especially in moot court. As if the more extreme your position, the more persuasive you'll be. It's an idea that runs smack into the paradox of persuasion: The harder you argue, the less persuasive you are.[11]

10. Robert J. Miner, Confronting the Communication Crisis in the Legal Profession, 34 N.Y.L. Sch. L. Rev. 1, 16 (1989).

11. Balanced Persuasion, A.B.A. J., Mar. 2002, at 60, 61.

Contrary to the opinions of the authors just quoted—that teachers in American law schools are disconnected from what members of the bench and bar believe about professional skills—the results of our survey seem to show that no such disconnect exists. At least to teachers of legal writing, the data showed that, for the most part, we teach what the bench and bar think is important. It does not appear that legal writing professionals concentrate on a framework that is at odds with what practitioners really do. In fact, as legal writing teachers ourselves, we have never known any of our colleagues to teach persuasion in the manner described by McElhaney.

Unfortunately, a few notable judges and attorneys may have a faulty concept of what is happening in the legal writing classroom. This is hardly a surprise since many of our colleagues who do not themselves teach legal writing fail to understand what and how we teach. But most practicing lawyers and judges seem to take a contrary view. It is encouraging to see that the first survey to compare the perceptions of different groups within the profession concerning the skills necessary to write well for the most part shows striking agreement.

In reviewing the data, as well as comments that respondents forwarded to us, we became aware that a broad swath of legal professionals think that members of the profession generally do not write well. While this belief may be a byproduct of the perception that new members of the profession do not write well, we think there may be more to it. In fact, one of the principal reasons why most law schools have professionalized legal writing positions and have devoted more curricular and professional resources to legal writing pedagogy is the perception that many lawyers do not write particularly well. This suggests that, while many in the profession agree about what constitutes good legal written work, these same legal professionals do not believe that their peers are meeting professional expectations. This is a problem that goes well beyond law schools.

The question then becomes: if so many members of the legal profession—attorneys, judges, and teachers—are working from the same framework, why do they think other lawyers write poorly? Why is it that a large number of legal professionals—including a strong cross-section of judges—seem to think that most lawyers' writing does not meet basic expectations? This question is vital if we are to determine what is hampering the ability of students to develop in a way that their writing teachers—and later their employers—would hope and expect. Below we examine several possible explanations. These theories are not mutually exclusive, and in all likelihood the true answer lies in some complex mixture of several of these possibilities.

In reviewing the literature on skills pedagogy in law schools, talking with our colleagues, and culling through the open-ended responses that we re-

ceived from our survey, we have compiled the following list.[12] Lawyers do not write well . . .

1. because they did not take a legal writing class in law school.
2. because law schools devalue legal writing classes.
3. because they do not get enough practice in law school.
4. because poor writing promotes their economic interests.
5. because of inertia.
6. because of deficiencies in their early education.
7. because the profession offers very little continuing education on improving writing skills.
8. because of time and financial constraints.
9. because they do not know they write badly.
10. because of the Generation X factor (in the case of new lawyers).
11. because of technology.
12. because they do not write regularly.

1. Lawyers do not write well because they did not take a legal writing class in law school.

Although most American law schools now have some type of required writing component as a part of their curriculum, this has not always been the case. "Legal Writing" as a teaching category was not recognized by the AALS until 1947.[13] Bibliography or legal research courses date back much further, to the turn of the twentieth century, but professionalized legal writing pedagogy was not widespread until quite recently. In fact, it is only in the last fifteen to twenty years that law schools have begun to see the importance of rigorous legal writing courses.

It is no wonder, then, that lawyers (young or old) are poor writers. Attorneys who graduated before the days of legal writing programs were never trained in the specialized genre of legal writing and never exposed to the various paradigms of organization with which today's students are indoctrinated.[14] Until recently lawyers' writing skills were generally acquired and honed on the job or not at all. This certainly explains why some members of the profession do not have the kind of skills their peers would like to see them exhibit.

12. We are grateful to the participants in our session on this research project during the Legal Writing Institute conference in Knoxville, Tennessee, in May 2002. While the participants and their contributions to the present discussion are too many to mention, we appreciate their assistance.

13. Marjorie Dick Rombauer, First Year Legal Research and Writing: Then and Now, 25 J. Legal Educ. 538, 540 (1973).

14. There are many competing paradigms now in use in legal writing classes. Representative samples can be found in Linda Holdeman Edwards, Legal Writing: Process, Analysis and Organization, 2d ed. (New York, 1999); Richard K. Neumann Jr., Legal Reasoning and Legal Writing: Structure, Strategy and Style, 4th ed. (Gaithersburg, 2001); Helene S. Shapo et al., Writing and Analysis in the Law, 4th ed. (New York, 2001).

This is not just a generational issue. Many more recent graduates may not have taken a comprehensive legal writing class, especially if they attended one of the "elite" law schools. Some of the last schools to adopt thorough legal writing programs staffed by trained legal writing professionals are top-tier institutions.[15] While this is slowly changing, it is not unusual for extremely bright and capable people to graduate from law school without ever having had to produce a substantial, well-written, and extensively researched paper.

One of the problems with our survey was that we failed to ask our respondents if they could categorize the producers of poor writing by generation or school. It would be interesting to see if persons who had had formal and extensive training in legal writing as students fared any better than those who had not. This would certainly be a useful and interesting study, but it will require a different survey.

2. Lawyers do not write well because law schools devalue legal writing classes.

There is a perception among some, many in the academy even, that skills pedagogy (and legal writing in particular) is fluff. Although the movement to professionalize legal writing instruction in law schools has gained a firm foothold, there are still many who think that the need for such instruction is overrated. Indeed, some even suggest that the increasing number of curricular hours being devoted to writing and skills classes hinders the underlying goal of a legal education (i.e., learning how to *think* like a lawyer). Because other classes are seen as more vital to the purposes of a legal education, writing instruction is relegated to secondary status. Schools that staff their writing programs with tenured or tenure-track professors are rare, and the sort of integrated writing across the curriculum other branches of higher education adopted years ago is almost nonexistent.[16]

The status issue, which is widely discussed among the growing ranks of professional skills and writing teachers, is keenly developed by Albert P. Blaustein:

> Why don't faculty members and deans consider legal research and writing important? Why do they fail to hold the status of instructors in these fields at the same high level enjoyed by the fellow tort, contract or commercial law professors? . . . What happens eventually is that the faculty experts get together at faculty meetings and decide upon a person to assign as instructor in research. They assign the chore to some old professor or young junior associate. Why don't they want to do it personally? Because they won't soil their hands on such an unimportant subject. So it falls to the lot of a minor instructor, or the librarian is asked to take on an additional duty.[17]

15. See Maureen J. Arrigo, Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs, 70 Temple L. Rev. 117, 144 (1997).

16. Perhaps Mercer comes closest, with a variety of writing-centered options available to students, including 11 hours of required writing courses, multiple upper-division electives, and a unique Certificate Program in Advanced Legal Writing, Research and Drafting.

17. Proceedings of the Fifty-second Annual Meeting of the American Association of Law Libraries, The Teaching of Legal Writing and Research—A Panel, 52 Law Libr. J. 350, 358–59 (1959).

This quotation illustrates the tension between the teaching of legal doctrine and the teaching of legal skills in most law schools. Many today still think law schools should be the place for passionate discussion of legal theories and principles, not the setting for instruction in the more mundane skills of actual lawyering.

Although outspoken critics of legal writing classes are dwindling, especially since the MacCrate Report was published, there are still those among us who identify with the opinions reported by Blaustein. Even if the academy does not openly disparage the usefulness of legal writing, its relegation to second-class status is evidenced by the staffing models, pay inequity, and professional status disparities at many law schools today. There are still at least thirty-eight schools that, for mainly economic reasons, hire adjuncts to teach legal writing. Another six use teaching assistants.[18] At the schools that have full-time faculty teaching legal writing, most of them are not on the tenure track and are paid considerably less than their doctrinal tenure-track colleagues.[19] A good number are not allowed to hire research assistants, apply for summer research grants, or serve on faculty committees. Their titles may be different (e.g., instructor,[20] lecturer, or clinical professor), and if they even are allowed to attend faculty meetings they may not have voting privileges.[21]

The impact this has on legal writing cannot be overestimated. Students are not blind to the difference in treatment of legal writing teachers as compared to other faculty. Although students may be told that written communication is important to the practice of law, that message is undermined by the way law schools treat their legal writing teachers. As a result, students may devalue the class, spending little time on it, and they may avoid elective writing courses because they understand that the academy does not value legal writing as important. Add to this the relatively small number of credit hours awarded for a class entailing much work, and the mixed message the students receive is solidified. The end result no doubt affects the quality of legal writing today.

Part of the problem is that most of the critics do not understand what is involved in a properly staffed, adequately funded legal writing course. Legal writing classes are not remedial English classes with a primary focus on grammar, punctuation, and spelling. Nor are they designed to teach basic examination techniques for doctrinal courses. Instead they teach legal analysis, legal thinking, and legal communication. In many ways, these classes are the only true opportunity for students to practice the sorts of writing and advocacy skills they will need when they pass the bar and start working as attorneys. By giving the writing programs the stature they are due, and giving

18. Jan M. Levine, Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching, 7 Scribes J. Legal Writing 51, 57, 58 (1998–2000). The latest version of the LRW Program Design and Faculty Status chart can be found at <http://www.alwd.org>, the Web site of the Association of Legal Writing Directors.

19. See Durako, *supra* note 9, at i.

20. At one school (Rutgers—Camden) teachers of legal writing are even called "assistant instructors."

21. See Durako, *supra* note 9, at 1–40.

students more opportunity to take writing-intensive courses, law schools would surely raise the level of writing competency among new lawyers.

Schools that treat legal writing teachers as equal to others, and give them the full benefits associated with tenure-track positions, are more likely to have and maintain strong legal writing courses. The move to professionalize the teaching of legal research and writing—which can be roughly traced to the beginning of the Legal Writing Institute in 1984, and to the founding of the Association of Legal Writing Directors nearly ten years ago—has had a palpable effect. More and more schools have recognized the need to devote the increased resources that professional legal writing teachers call for. New schools have led the way in this, in fact, with several schools that were founded in the last decade explicitly recognizing the need to institute strong writing and skills components to their curricula.[22]

3. Lawyers do not write well because they do not get enough practice in law school.

At some very real level, it is clear that students do not have enough opportunity to continue practicing and refining their skills after they have completed the two (or rarely three) required semesters of writing and advocacy. Perhaps the real problem is that there should be *more* writing-centered courses in the curriculum of every law school. ABA Standard 302(a)(2) requires "substantial legal writing instruction, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year," but does not define what satisfies either of the requirements.

This lack of guidance results in widespread disparities between law schools. Some schools satisfy the first-year requirement by requiring one credit each semester. Others require two credits, three credits, or some other combination in the first year. Only a few schools have additional credits in a required program beyond the first year.[23] While every law faculty struggles to allot hours to a whole host of pedagogically valuable classes and programs, it is invariably the case that legal writing and lawyering skills get the least priority.

Most schools have some sort of advanced writing classes that upper-level students may take as an elective in lieu of a bar-related course (or a course in a specialty area of the law).[24] But advanced courses also vary significantly; some schools offer no elective-level writing courses, while others offer several. At the schools offering advanced legal writing, the courses vary from the standard

22. For instance, at the Appalachian School of Law all skills and writing courses are taught by tenure-track faculty who also teach doctrinal classes. Barry, Chapman, and Florida Coastal also have firm commitments to skills and writing classes.

23. Durako, *supra* note 9, at 5.

24. We do not mean to suggest that legal writing is unrelated to success on the bar examination. This skill is absolutely vital to passing the bar. The doctrinal courses, however, tend to get most of the focus in curriculum development; most law faculties would rather add more bar-related doctrine than add elective writing courses. It would be interesting to see what, if any, correlation there is between the bar passage rate of students who forgo a traditional bar-related doctrinal course for an advanced skills course and those who take the more conventional route. This would be especially important information given that many states have incorporated the Multistate Performance Test into the bar exam.

model to courses in drafting and judicial opinion writing. Even a full range of writing courses has trouble competing with sexier courses in a crowded curriculum.

Most experts would agree that writing is difficult and the surest way to improve as a writer is through practice. A one-hour requirement per semester cannot possibly give the student adequate practice time. Our position is that legal writing will never improve much until the academy and the bar make it a real priority. This means requiring some type of legal writing in every semester of law school, perhaps even requiring a writing component in most (or dare we say all?) courses, and then extending that commitment with continuing education. Writing is not a skill to be learned in minimal credit hours. It needs to be constantly cultivated. The profession continually points to good writing as one of the most important skills for any attorney. Surveys show that writing is extremely important in hiring and advancement decisions.[25] Even so, both the bar and the academy give writing the shortest shrift in terms of time, resources, and personnel devoted to it.

4. Lawyers do not write well because poor writing promotes their economic interests.

Not all people think lawyers' poor communication skills are a result of inadequate knowledge or practice.[26] Some—perhaps the more cynical—believe they have more to do with self-preservation than anything else.[27] Several authors have suggested that attorneys purposely use legalese and muddled organization to substantiate their billings, and to enjoy a certain power in being the only one to understand what is written.[28] If they know something that the rest of the world does not, then they deserve to be paid handsomely.

Additionally, some argue that attorneys use language to confuse the issue, especially if they have a losing case.[29] This theory does have a certain appeal to it. All the groups we surveyed basically agreed on the elements required to make legal writing effective. Can it be that members of the legal profession know exactly what to do, but choose not to do it? In some situations this might be the case. Anecdotal evidence suggests that most of us have seen lawyers write with the purpose of obfuscation, either to pump a client for billable hours or to confuse and frustrate an adversary. We only hope that such behavior is not so widespread as some suggest.

5. Lawyers do not write well because of inertia.

It may be that legal writing does not improve because most attorneys learned law by reading poorly written judicial opinions. That is still true, not because law teachers consciously resist change, but just because it has always

25. Bryant G. Garth & Joanne Martin, Law Schools and the Construction of Competence, 43 J. Legal Educ. 469, 475 table 2, 489 table 10 (1993).

26. See Steven Stark, Why Lawyers Can't Write, 97 Harv. L. Rev. 1389, 1389 (1984).

27. See George Hathaway, Overview of the Plain English Movement for Lawyers . . . Ten Years Later, 73 Mich. B.J. 26, 29 (1994).

28. See, e.g., Miner, *supra* note 10, at 5; Stark, *supra* note 26, at 1389–92.

29. See Hathaway, *supra* note 27, at 29.

been that way. Our deep common law roots and reliance on a precedent model of jurisprudence—with its inevitable parroting of arcane usage—only make change that much more difficult. We are a profession that relies on the past to win in the present.[30] Lawyers frequently incorporate poorly crafted language into their writing. The use of form banks and the almost maniacal use of direct quotations are the most egregious practices. The reliance on forms and existing documents, with little or no revision, perpetuates legal writing problems, including poor organization, insufficient analysis, and arcane language and legalese.

Perhaps the risks inhibit reform in writing. For example, a junior member in a firm may be reluctant to write clearly and concisely if the senior partners write in a more labored style. And some clients may insist on the "traditional" style of writing.[31]

The plain English movement has been inhibited to some degree by this inertia. While the idea of eliminating arcane usage has taken hold in some circles, other legal professionals continue working and writing in the same ways they always have. This is one important reason why good legal writing instruction is so vital during law school. We should foster good habits from the very beginning. Replacing bad habits with good habits is much more difficult than starting with a clean slate.

6. Lawyers do not write well because of deficiencies in their early education.

In 1998 the U.S. Department of Education's National Center for Education Statistics conducted a national survey of fourth, eighth, and twelfth graders as part of the National Assessment of Educational Progress, the ongoing survey of what students in these grades know about various subjects.[32] Students' performance on the assessment is described in terms of their average score on a 0-to-300 scale. The final report showed the percentage of students at each of the three achievement levels: basic, proficient, and advanced. The percentage of students scoring at or above the basic level for each grade was relatively high. But the basic level only "denotes partial mastery of the knowledge and skills fundamental for proficient work at a given grade."[33] Students performing at or above the proficient level dropped to 23, 27, and 22 percent respectively, and only 1 percent of each grade reached the advanced level. That is disheartening, because the proficiency level represents the standard that all students should reach.

30. Oliver Wendell Holmes Jr., The Common Law 1 (New York, 1881).

31. Debra R. Cohen has said: "Junior lawyers are not willing to risk their jobs to criticize senior lawyers' writing. Nor are they willing to risk malpractice by revising language drafted by a specialist in her area of expertise. Concerned about their professional future, lawyers quickly conform to the accepted writing style." Competent Legal Writing—A Lawyer's Professional Responsibility, 67 U. Cin. L. Rev. 491, 514–15 (1999).

32. Elissa A. Greenwald et al., NAEP 1998 Writing Report Card for the Nation and the States, <http://nces.ed.gov/nationsreportcard/writing/> (last visited Sept. 6, 2002).

33. Gary W. Phillips, The Release of the National Assessment of Educational Progress (NAEP) 1998 Writing Report for the Nation and the States, <http://nces.ed.gov/commissioner/remarks99/9_28_99.asp> (last visited Mar. 18, 2002).

Another study surveyed 251 teachers in two- and four-year colleges who had taught freshmen or sophomores in the previous two years. Three-fourths of the respondents said today's high school graduates have just fair or poor skills in spelling and grammar and are unable to write clearly.[34]

Poor writing is not just a middle school and high school problem. About three-quarters (78%) of higher-education institutions that enrolled freshmen offered at least one remedial reading, writing, or mathematics course in fall 1995.[35] Apparently educators from grade school through college have resigned themselves to their students' poor writing. It is little wonder, then, that students enter law school with serious flaws in their writing ability.

7. Lawyers do not write well because the profession offers very little continuing education on improving writing skills.

State bar associations do not focus on the writing skills of their members. Although they offer a few courses designed to help practicing attorneys hone their writing skills, the bulk of CLE programs deal with substantive law issues. It is hard to know why there is such a dearth of writing programs when a clear majority of our respondents think lawyers' writing needs improvement. It may be that attending a writing course would be seen as an admission of a writing problem. Or perhaps, as with ethics courses, practicing attorneys see CLE programs on writing as fluff that is not worth their time. This parallel to ethics courses is instructive. It was not until state bar associations began requiring attendance at ethics programs that they became commonplace. Perhaps bar associations would do well to require that attorneys attend CLE programs on writing and advocacy. Since writing is such a central part of the attorney's craft, mandatory instruction beyond law school seems an important step in the right direction.

8. Lawyers do not write well because of time and financial constraints.

Most lawyers are extremely time and expense conscious—with good reason. In an increasingly competitive legal market attorneys look for ways to streamline their work. Spending less time writing is one way to do that. One attorney told us bluntly that lawyers do not write well because clients are not willing to pay for it. He said that he cannot justify spending hours of billable time editing and revising written work when the relative value of the case is small or the client wants to keep costs low. The cost can be especially high if the attorney needs to make new habits and break old ones. Simply put, clients are usually more willing to pay for hours spent in court or in negotiations with opposing counsel than for hours spent drafting and redrafting a document.

Time constraints also make writing well a challenge. The attorneys we talked to said they would like to spend more time on their work, but there just

34. Reality Check, as the study was titled, was conducted by Public Agenda, a nonprofit, nonpartisan research organization in New York. See Public Agenda Online, Reality Check 2002, <http://www.publicagenda.org/specials/rcheck2002/reality5.htm> (last visited Mar. 19, 2002).

35. National Center for Education Statistics, Remedial Education at Higher Education Institutions in Fall 1995, <http://nces.ed.gov/pubs/97584.html> (last visited Mar. 19, 2002).

are not enough hours in the day. One told us that he might need to file a summary motion memorandum on Monday, an appellate brief on Tuesday, and trial memoranda by the end of the week. Such a number of pleadings and memoranda have to be written quickly.[36]

Then there is the fact that most cases are settled before they get to trial. As a result, many attorneys put off drafting their memos and briefs until the eleventh hour. By then the time and resources necessary to complete a thoughtful and well-written document are not available.

9. Lawyers do not write well because they do not know they write badly.

An attorney's work is seldom meaningfully edited. With virtually no feedback, attorneys become trapped in long-entrenched writing habits that may not be good. Furthermore, most attorneys work with others who maintain arcane and outmoded writing styles. In essence, it is hard to know that you write badly if you work alongside poor writers. Nor is there much incentive to improve; attorneys may fail to see the connection between good writing and desired outcomes. If their current writing seems to get the job done, why try to change it?

Matters might be different if judges commented more frequently on the quality—or lack thereof—of counsels' briefs. As our study indicates, many judges think the writing they see is poor. But judges seem not to hold bad writing against the lawyers who produce it. If senior attorneys and judges fail to hold their peers accountable, it is no wonder that practicing lawyers continue to work and write in the ways they have become accustomed to.

10. New lawyers do not write well because of the Generation X factor.

There has been a great deal of discussion in the popular media about the generation born between 1963 and 1977. Almost all of it is somewhat negative. The standard line is that Gen X'ers, especially those who have gone to college, are somehow different in the way they interact in the world, and they do not have the work ethic or motivation of their elders. As Russell Clough puts it, "they have no loyalty, they're impatient, and they feel like they are entitled to something."[37] In the legal profession, the claim is that young lawyers do not have the sort of professional skills that older lawyers have, in part because the members of Generation X have different priorities from those of previous generations.[38]

36. This is one good reason why the use of various structural paradigms in legal writing classes is so important and effective. If new lawyers are taught to rely on structural paradigms, they will actually become more efficient in their writing.

37. <http://www.achrnews.com/CDA/ArticleInformation/features/BNP__Features__Item/0,1338,65968,00.html> (last visited Aug. 21, 2002).

38. Clough, a professor of management at Stanford University who has written and lectured on Generation X, has said: "They feel that since they were latchkey kids, their parents didn't have time for them[.]" Clough goes on to explain "that those in Generation X do not want their careers to define their lives, and they do not want their work to come between them and spending time with family." *Id.*

As legal educators, we certainly see that poor writing is correlated with poor work habits and the generalized malaise that infects our students in increasing numbers. But this should not be taken too far. Virtually every generation in recorded memory has been criticized by its precessors as lazy and self-centered. That said, the cultural and educational background of many young lawyers has not prepared them for the sort of extended effort required to consistently produce high-quality written work. The video generation (which roughly corresponds to Generation X) has been conditioned to seek immediate gratification. Their impatience can lead quite clearly to conclusory analysis and weak writing skills. It is difficult to recondition students and young lawyers to work long and hard on their writing when they have never had to put forth such an effort.

11. Lawyers do not write well because of technology.

Although technology has revolutionized our ability to communicate, it may actually have hurt writing skills. Most attorneys today have computers on their desks and can work on documents as time allows. But this convenience and efficiency comes at a cost. Because writing is hard work, lawyers will invariably try to cut corners. Cutting and pasting from brief and form banks is quick and easy, but many lawyers who do that lose the ability to write comprehensibly on their own. Spell check and grammar check have caused many writers to become lazy editors of their work. Those tools may be of some help, but they will not catch poor organization, weak analysis, or the correctly spelled word that makes no sense. Only careful, intelligent review can ensure excellent writing. Despite the technological advances of the last three decades, legal professionals who want to produce high-quality work must still write and edit one word at a time.

12. Lawyers do not write well because they do not write regularly.

Writing is a skill that requires regular practice. Some attorneys, especially those in district court practice and certain specialty areas (such as real estate), simply do not get many opportunities to write, and they face a real challenge when the need to write arises. Their writing skills are likely to have become rusty through disuse. In effect, lawyers who are not in the habit of thinking every day about clear organization and writing may not be very effective at written communication.

It is not only certain kinds of law practice that lack writing opportunities. New lawyers in large firms are often given drudge tasks of research or discovery review that require little in the way of complex writing skills. A new lawyer may write the occasional predictive memo for a partner or client, but may have little chance to hone the skills that participants in our study identified as being vital to good persuasive legal writing. In fact, many law students believe that working anonymously in a large firm will insulate them from having to write much. Whatever the cause, employment situations that involve little writing feed into the poor writing habits of the profession as a whole.

Recommendations

Given widespread agreement that new lawyers do not write particularly well, what should be done? Certainly the legal academy should continue—and even accelerate—the movement toward solidly established legal research and writing programs. Those last bastions that relegate writing and skills classes to adjunct instructors or third-year students need to be brought into the fold. More schools need to move toward the tenure model for writing and skills teachers. In addition, schools need to offer more upper-level writing courses and to integrate writing components into more and more doctrinal classes. In short, increased status and more resources need to be accorded this most important skill.

Practicing lawyers and judges also need more exposure to writing instruction, either formal or informal. State bar associations should require CLE courses that focus on general writing or particular drafting skills. The law, as we all certainly know, is a profession that requires us to take good care of the tools we employ in its exercise. If we allow our primary skills to weaken or atrophy, the profession as a whole suffers. We must make sure that new technologies do not undermine our professional skills, but augment them.

Perhaps the most important way to improve writing in our profession is to pay more explicit attention to our own work and that of our colleagues. Our work habits influence those of others; we should always set a good example. We should also talk with our peers about writing, and offer constructive criticism of work that we think deficient. If we take the time to give proper care and attention to our writing, and to the writing of our peers, we can have a tremendous influence on the quality of the writing we see.

The development and cultivation of good writing requires the continued attention of each member of the profession. Legal practitioners and judges need to pick up where legal writing teachers leave off. New generations must be trained and conditioned to accept the responsibility that professionalism requires. Law is, and really always has been, a mentoring profession; we all need to help its new members to improve their writing.